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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Inquiry concerning Spain carried out by the Committee under article 6 of the Optional Protocol to the Convention

Observations of Spain*

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A. Introduction

1. The Government of Spain welcomes the report issued by the Committee on the Rights of Persons with Disabilities in connection with the inquiry under article 6 of the Optional Protocol, as well as the recommendations and suggestions contained in the report. The Government appreciates the interest shown by the Committee and the work of its members.

2. The process of drafting this document involved sending the Committee's report to the Autonomous Communities, whose contributions are included below.

3. With regard to the content of the report, the Government firmly rejects the Committee's view of the regulations and treatment applied to persons with disabilities in the Spanish education system and strongly disagrees with the position adopted by the Committee in the report.

4. The Government particularly objects to the contents of paragraph 80 (in the section entitled "conclusions and recommendations"), which states that "*Given the number, continuing nature and diversity of violations found and the fact that they are interlinked on a permanent and continuous basis, and taking into account that such violations result in large part from the system established by legislation, policies and institutional practices, the Committee concludes that the findings of the present inquiry are reliable and indicate grave or systematic violations within the meaning of article 6 of the Optional Protocol and rule 83 of the Committee's rules of procedure. The Committee considers that the systematic denial of equal rights for persons with disabilities may take place either deliberately, namely with the State party's intent to commit such acts, or as a result of discriminatory laws or policies, with or without such intent.*" It is absolutely inadmissible and unacceptable to claim that the State denies equal rights to persons with disabilities or that it might do so deliberately, i.e., with the intention of committing such acts through its laws and/or discriminatory policies. Nothing could be further from the truth: in its educational and social legislation, and in the implementation of that legislation, Spain is committed to inclusive education for all students.

5. The Spanish education system, which is governed by the principle of inclusion, provides the resources needed to fulfil this goal with the aim of achieving full educational and social inclusion. This principle is established by the main laws governing the education system that different governments have adopted in recent years, including Organic Act No. 1/1990 of 3 October on the General Organization of the Education System, Organic Act No. 2/2006 of 3 May on Education and Organic Act No. 8/2013 of 9 December on Improving the Quality of Education.

6. The education authorities, which have specific competencies, have taken steps to promote inclusion, both in their own regulations and in the measures taken in respect of all aspects of education.

7. The task of ensuring full inclusion of pupils and students with disabilities depends on the commitment of every professional in the education system and the collaboration of families, who always work in the best interests of the child in accordance with established procedures.

8. The language used in the report includes terms and expressions that have negative and derogatory connotations that we object to and reject absolutely. By way of example, we might cite paragraph 28, which says "*... pupils with disabilities can find themselves trapped by teachers and the administration in a setting that offers very poor or very few prospects for the pupil and for his or her performance. Exclusion includes segregation practices whereby pupils with disabilities are (...) perceived as 'second-class' individuals with 'few opportunities'.*"

9. The use of the word "trapped" denotes a lack of understanding of the situations concerned, since the professionals working in special schools are properly prepared and highly committed to working in the best interests of the child. Therefore, the fact that a

child is attending a special school does not mean that he or she is receiving a second-class education.

10. Other unfortunate terms are used, such as "violation", "exclusion", "perpetuating", "lies with" etc.

11. Furthermore, the report criticizes certain bodies, including State-subsidized private schools (para. 32) and the Constitutional Court (para. 70), in ways that are unacceptable.

12. It is claimed that State-subsidized private schools "*may refuse to admit children with disabilities*". It must be pointed out that both State schools and State-subsidized private schools are subject to laws and procedures governing the admission of pupils that apply to everyone on an equal basis.

13. With regard to the Constitutional Court, it is stated that "*the rulings on inclusive education handed down by the Constitutional Court, the highest judicial body, demonstrate a lack of knowledge about the meaning and purpose of the principles of the Convention in relation to inclusive education*". This assessment is a value judgment. The Court interprets the law in accordance with the Constitution and the legislation in force, including the Convention on the Rights of Persons with Disabilities. The fact that the Committee might disagree with the judgments issued by the Court is a different matter.

14. The report also makes sweeping claims about the Spanish State on the basis of isolated pieces of information.

15. For example, the opinion of a teenager who claimed that there are no extracurricular activities because there are pupils with disabilities who cannot do them (para. 58) cannot be said to apply to the education system as a whole.

16. The report also contains serious allegations about incidents of violence and bullying in ordinary schools that are somewhat casually made and insufficiently substantiated. Bullying is a serious matter that should not be the subject of vague, sweeping considerations or unsubstantiated speculation. If it has taken place, the school and the pupil concerned should be identified so that the situation can be automatically reported.

17. Lastly, it must be pointed out that all Spanish laws on pupils with special educational needs are based on the social and human rights model and not, as claimed in paragraph 29 and other parts of the report, on the outdated medical model. This is also the case of the educational regulations of the State and of the various education authorities.

B. Observations on the report

18. The following points are based on a more detailed analysis of aspects of the Committee's report:

Assessments conducted in accordance with the medical model of disability

19. The report states that the right to an inclusive and quality education is violated because assessments are conducted in accordance with the medical model of disability (para. 23). Laws concerning the education and social services of pupils with special educational needs are based on the social and human rights model and not on the outdated medical model. The same is true of the educational regulations in force in the Spanish State, including those of the Autonomous Communities.

20. In referring to the Order of 14 February 1996 to make the point that "*there are no clear guidelines on how to conduct an assessment*", the report is citing legislation that has been repealed (para. 29). The aforementioned order was repealed in 2010 by Order EDU/849/2010 of 18 March, which sets out very clear and specific guidelines on how to conduct psychological/educational assessments and make decisions on schooling.

21. Furthermore, as the Autonomous Community of Andalusia states in its observations, "*the report is based on the idea that Spain is a country that commits serious violations of the rights of persons with disabilities because structural exclusion and segregation are practised in the education system. Under Spanish legislation on education, public policy on*

education is governed by the principle of inclusion. There may be some specific cases in which the care of pupils with disabilities could be improved but it seems excessive to describe the entire Spanish education system as an exclusive, segregating system, especially when several decades have passed since that system moved away from a medical model based on shortcomings towards an educational model based on strengths. Another problem with the document is that it considers the Spanish education system as a whole without examining the differences that exist between the communities."

22. Under Spanish law, the shift towards a social approach to disability had already occurred prior to the ratification and entry into force of the Convention on 3 May 2008. Since the advent of democracy in Spain, persons with disabilities have always been treated on an equal footing with other citizens, in accordance with article 49 of the Spanish Constitution.

Distribution of responsibilities

23. The report describes the way in which responsibilities are shared between the State and the Autonomous Communities in the area of education.

24. Paragraph 30 states that "*Under article 74 (4) of the Organic Act on Improving the Quality of Education, responsibility for promoting the education of 'children with special educational needs' lies with the education authority in each Autonomous Community (...) some Autonomous Communities apply the Organic Act on Improving the Quality of Education, while others have separate legislation*". This wording reveals either an ignorance of Spanish law or a terminological confusion as the education authorities have responsibilities that they exercise in accordance with basic legislation.

25. In any case, it should be borne in mind that Spanish legislation provides for the right to inclusive education, as set out in article 18 of Royal Legislative Decree No. 1/2013 of 29 November 2013, approving the revised text of the General Act on the Rights and Social Inclusion of Persons with Disabilities. That right is also provided for in educational legislation (the Organic Act on Education and the Organic Act on Improving Educational Quality), the principles that govern that legislation and the paragraph on schooling that establishes that the schooling of pupils with special educational needs shall be governed by the principles of normality and inclusion.

26. In this connection, the Autonomous Community of Castile-La Mancha states that "*although the development of the legislation in force in the area of education in the Community of Castile-La Mancha complies with the national legal framework and legal principles, it explicitly provides for the right to an inclusive education, the recognition and rights of persons with disabilities and the presence and participation of pupils and their families in the mainstream education system of our community*".

27. With regard to its legislative efforts, the Community of Valencia states that "*the decree establishing the principle of inclusion in the Valencian education system, which is in its final stage of drafting, is intended to establish and regulate principles and actions aimed at implementing an inclusive model that makes it possible to achieve equity and equality of opportunity by enabling all pupils to enter and remain in the education system and ensuring that schools are catalysts for social change, equality and the full inclusion of all persons, particularly those who are most vulnerable and at risk of exclusion*". The Autonomous Community of Castile and León states that "*the Committee's visit took place in January 2017, when the Second Plan on Respect for Diversity of 15 June 2017 was being adopted by agreement of the Governing Council. One of the actions implemented under the Plan involves creating different educational formulas to make the system more flexible so that it can be adapted to the requirements of students with special educational needs. This plan provides for legislative alignment between 2017 and 2022.*"

Models of schooling

28. The report is incorrect to state that there are three models for promoting diversity (paragraph 31): the Spanish education system is a single system in which diversity is promoted in different ways.

29. With regard to schools, the report states that "*In addition to these educational models for pupils with disabilities, the school system comprises: (a) State schools; (b) private schools; and (c) State-subsidized private schools. The latter receive public funds but have their own regulations and may refuse to admit children with disabilities.*"

30. This statement, which is in paragraph 32, is incorrect. Each Autonomous Community legislates in accordance with criteria governing the choice of a school that are the same for State schools and State-subsidized private schools.

31. For example, the Autonomous Community of the Principality of Asturias states that "*State-subsidized private schools are governed by the same standards as State schools and cannot refuse admission to pupils merely because they have a disability*". This principle is reflected in its regulations. The Autonomous Community of Madrid states that "*the report is incorrect to claim that State-subsidized private schools can refuse to admit children with disabilities as all Autonomous Communities have legislation that reserves places for pupils with special educational needs in all publicly funded establishments, and their schooling is coordinated by service commissions or education units that report to the educational authorities*".

32. In general, in all educational authorities, these commissions are responsible for placing pupils with special educational needs in school after consulting their parents or legal guardians, and for ensuring the right to education, equal access and the freedom of families to choose a school. The commissions thus ensure that an appropriate and balanced approach is taken to the placement of pupils with special educational needs in State and State-subsidized private schools in order to ensure quality of education, social cohesion and equal opportunities for all. When dealing with applications for admission from pupils who might have special educational needs, the commissions request the educational guidance services to conduct an urgent assessment and the competent educational inspection service to issue a report. At ordinary schools that admit such pupils, the ratio of non-disabled pupils to pupils with special educational needs is normally reduced to 2:1.

33. Contrary to what is stated in the report, differences between disabilities prevent them from being homogenized within an absolute framework, but in no circumstances are persons with disabilities refused admission.

Post-compulsory education

34. In paragraphs 34 to 37, the authors of the report criticize the fact that pupils with disabilities drop out of education when, as for all other pupils, the only obstacles to their entering post-compulsory and higher education are academic qualifications. Paragraph 34 states that "*the dropout rates for boys and, especially, girls with disabilities are higher than the national average*". This is an area in which the Government is working to bring about improvements by applying different measures, including the possibility of adapting curricula and taking other measures to ensure that all pupils are catered for in the best and most inclusive way possible, with no discrimination of any kind. The Ministry of Education, Culture and Sports is introducing a series of grants for non-profit organizations that aims to strengthen the development of capacities and the acquisition of basic skills, promoting comprehensive development in areas such as quality of life, self-determination, cognitive stimulation, communication, personal and social skills, knowledge and exercise of the rights of persons with disabilities, interdependence, independent living and participation and inclusion in all areas of society.

Psychological/educational assessments

35. In paragraphs 38 to 45, the authors of the report criticize the system of psychological assessments, going so far as to insinuate that they are conducted arbitrarily, without any oversight or any technical or professional preparation.

36. Paragraph 38 states that "*instead of exploring all the possibilities for inclusion, assessments refer pupils to special schools, thereby precluding mainstream schools from taking responsibility for the provision of support measures and reasonable accommodation*". This assertion is untrue: through assessments and established procedures,

professionals explore every opportunity for inclusion to ensure that children receive the best education.

37. Evaluations of psychological/educational assessments indicate that one of the main functions of educational guidance and psychological/educational assessment is to conduct a reasoned analysis of the benefits of the proposed schooling option for the pupil, the guidance on curricular and organizational measures that the school should adopt in order to provide the pupil with the appropriate care, the guidance aimed at the family and, where appropriate, the guidance aimed at the pupil, by weighing up the forms of support necessary for his or her schooling.

38. It is absolutely inappropriate to question the work of the professionals trained at different levels (higher education, technical studies, civil service examinations and, where appropriate, in-service training) who are engaged in delivering these services, which is not to say that further progress towards more inclusive strategies should not be made.

39. Paragraph 39 of the report states that "*the identification and assessment of the pupil's educational needs are still undertaken at the initiative of the professional involved*", which is untrue as there are clearly defined protocols in each Autonomous Community.

40. In this regard, it is worth quoting the following observations made by the Autonomous Community of Castile and León: "*the template and guidelines for the conduct of psychological/educational assessments are well structured and defined in the legislation of Castile and León, in particular in Order EDU/1603/2009 of 20 July, which establishes the templates to be used in the evaluation process and in the decision on schooling.*

41. *In addition, as a result of the implementation of the Second Plan on Respect for Diversity, steps are being taken to draft procedural protocols relating to the different types of disability, which set out the approach to be taken to assessments and other matters.*

42. *However, if the family and the education professionals of Castile and León disagree with the outcome of a psychological/educational assessment, an external, multidisciplinary team may intervene and submit an expert opinion, as provided for in article 1.4 of Order EDU/11/2016 of 12 January, published in the Official Gazette of Castile and León of 19 January: "The conduct of psychological/educational assessments by external experts, on an extraordinary basis, subject to prior authorization by the competent Directorate-General.*

43. *In situations where the external, multidisciplinary team is called on to review the assessment and provide an expert opinion, it is guaranteed to perform its work thoroughly and objectively and its decision will be respected by the education authorities.*"

44. In addition, the Autonomous Community of the Principality of Asturias states that "*contrary to what is stated in the report, decisions on schooling serve to establish reasonable accommodation, the necessary human and material resources and the curricular adaptations and other educational measures required for pupils to attend ordinary schools. In fact, they serve as the basis for calculating the number of specialized staff in schools. The situation described here is extraordinary; the number of decisions involving a final recommendation that schooling should take place in special schools is minimal.*"

45. Following the same line of argument, the Autonomous Community of Aragon states that "*psychological/educational assessment is an interactive, participatory, comprehensive and contextualized process that goes beyond clinical approaches to assessment and takes a deeper, holistic approach to the detection of needs, offering practical, specific guidelines for the adaptation of the child's education*" and that "*detection, evaluation and the promotion of specific educational support needs will take place at the earliest possible age*".

46. The Autonomous Community of La Rioja states that "*an Order on Psychological/Educational Assessment is currently being drafted that is aimed at identifying the needs of pupils and establishing the potential ways in which they can enhance their development and independence*".

47. Lastly, the Autonomous Community of Andalusia stresses that "*the decision involves proposing a type of schooling that the families concerned may or may not accept and against which they can file appeals and claims in accordance with the procedures set*

out in the instructions of 8 March 2017. The procedure for the reconsideration of the conditions concerned is set out in the above-mentioned regulations. The system is based, not on a model defined by shortcomings, as stated in the document, but on the pupils' educational needs, which it attempts to meet in the most inclusive environment possible without ever labelling pupils as 'unteachable'."

48. It is not the case that parents' opinions are disregarded in decisions on schooling. They are informed of such decisions then decide whether or not to give their consent in accordance with the process previously set out in the regulations. They also have the recognized right to file a legal complaint with the authority specified in the procedures established in law.

Disability and school enrolment statistics

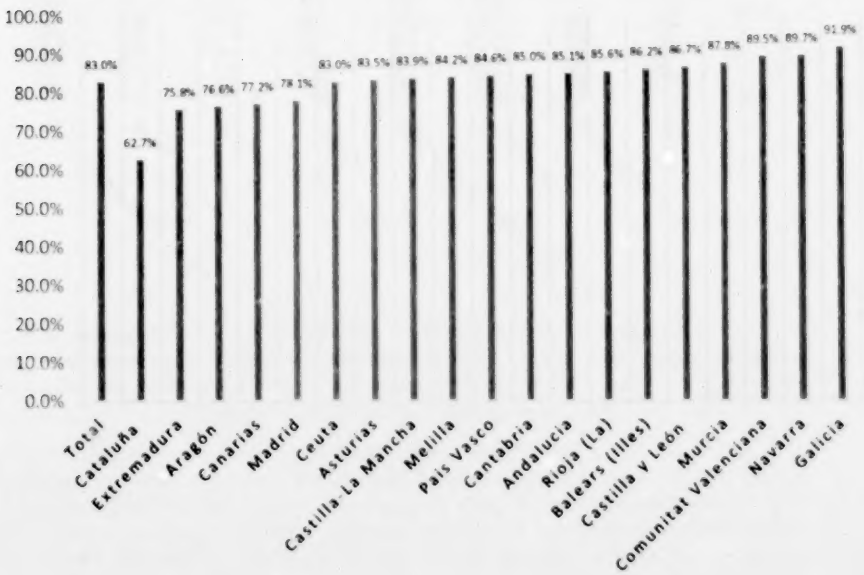
49. Paragraphs 46 to 49 refer to pupils with attention deficit hyperactivity disorder, who are not classed as persons with special educational needs. All pupils for whom this is the only element in their case history to be considered attend ordinary schools.

50. The report makes a veiled allusion to the manipulation of statistical data (para. 47) that *"conceal a pattern of cases showing an education system that continues to operate according to the segregated education model"*.

51. The Committee noted that the statistical data conceal other situations that do not coincide with reality. However, this statement does not cite any rigorous analysis, other than a single example relating to Catalonia, which does not reflect reality (the Committee states that 88 per cent of pupils with disabilities in Catalonia are in special schools when 62.7 per cent are actually enrolled in mainstream schools) and it is not indicative of the scenario revealed by official data, which is entirely different to the one imagined by the Committee. Those data reflect the reality of schooling in Spain, which does not involve any kind of segregation but seeks the most appropriate response to the needs of pupils in order to ensure their inclusion. Official statistics show that, throughout Spain, there are 206,493 pupils with special educational needs associated with a disability, 171,303 (83 per cent) of whom are in mainstream schools.

Figure 2

Percentage of integrated pupils with special educational needs by Autonomous Community in the 2015/16 school year



52. Paragraph 48 of the report states that "*students with disabilities, particularly those with intellectual or psychosocial disabilities, who attend mainstream schools continue to be separated from their classmates, who view their presence in the classroom as an exception. The Committee observed that in the majority of cases where students with disabilities were taught in ordinary classrooms in ordinary schools, they were usually given work that was different from that given to the rest of the students and that was not necessarily related to the lesson, reinforcing their exclusion, denying their right to an inclusive and quality education, and denying all students the opportunity to learn about respect for difference and diversity. While the Committee did visit mainstream schools that were running very encouraging programmes, these were one-off or pilot programmes whose future was uncertain. The system of discriminatory exclusion is therefore being perpetuated, despite clear examples that show that the true inclusion of persons with disabilities is achievable.*"

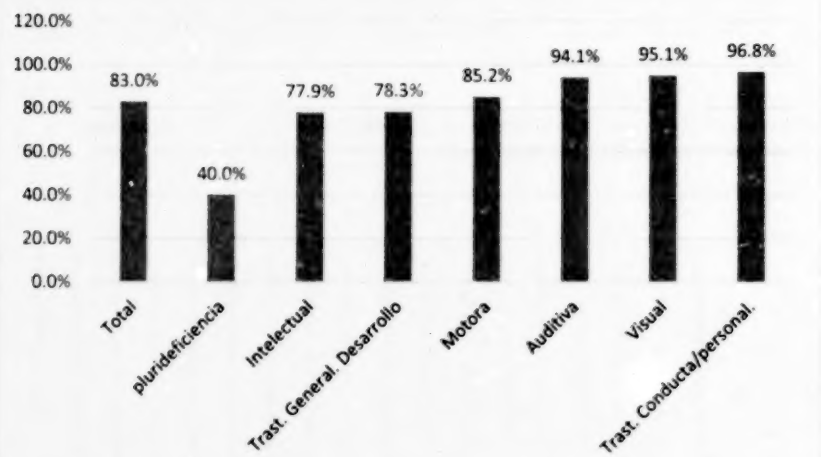
53. In considering the claim that persons with intellectual, psychosocial or multiple disabilities are excluded from the education system, it is worth recalling that 99.6 per cent of the total number of pupils in Spain are studying in ordinary schools. All these data are taken from the official statistics that the Ministry of Education, Culture and Sports publishes every year in collaboration with the Autonomous Communities.

54. The most common disabilities found among pupils with special educational needs are intellectual disabilities (32.7 per cent), serious behavioural and personality disorders (20.7 per cent) and pervasive development disorders (18.2 per cent).

55. Where types of disability are concerned, the pupils with the highest levels of integration are those with serious behavioural/personality disorders (96.8 per cent), visual impairments (95.1 per cent) and hearing impairments (94.1 per cent).

Figure 3

Percentage of integrated pupils with special educational needs by type of disability in the 2015/16 school year



56. Inclusive education practices have been developed in Spain for a long time. In most educational communities, qualified professionals routinely strive to care for and ensure the educational inclusion of pupils. It is therefore not acceptable to claim that this work corresponds to one-off or pilot programmes whose future is uncertain.

57. In the case of the Autonomous Community of Catalonia, it should be noted that the education system has undergone profound changes in the area of educational inclusion. This Autonomous Community disputes the Committee's claim that "*the difficulties pupils with disabilities encounter are resolved on an ad hoc basis. In most cases, the future of a student with disabilities depends on the will of his or her parents and that of the administrative, educational and inspection personnel involved, rather than on the realization of his or her right to an inclusive and quality education.*" In Catalonia, "*the*

Department published, in late 2017, Decree No. 150/2017 of 17 October on educational support for pupils in an inclusive education system, the aim of which is to ensure that all publicly funded educational establishments providing non-university education are inclusive through the establishment of criteria governing the organization and management of such establishments; the planning of measures and means of providing educational support and promoting the educational continuity of all pupils, and the diversification of services offered by special schools to enable them to provide services and resources to ordinary schools with the aim of supplementing the inclusive education support network".

58. It is therefore clear that the difficulties faced by pupils with disabilities are resolved in accordance with regulations issued on the basis of established criteria and defined procedures and not in a manner that is arbitrary or that largely depends on the will of family members or the teaching, administrative or inspection staff involved.

59. Paragraph 49 states that "*the situation of persons with visual impairments requires a special mention. Persons who are members of the Spanish National Organization for the Blind (ONCE), a non-profit foundation, receive from the Organization the support they need in ordinary or private schools. ONCE provides specialized support in the form of teaching support for Braille, adaptation of materials, rehabilitation techniques, and student counselling outside school hours. The Committee observed, however, that teachers and other school staff had not received the necessary training in inclusive education and human rights to be able to work with outside experts and advisers to create inclusive learning environments. For instance, in one case, ONCE's recommendations to facilitate a student's learning were not implemented by the teaching staff of a mainstream school and were ignored by the administrative staff, who repeatedly removed the tactile markings on the student's desk and chair in order to be able to clean them.*"

60. The Spanish Government maintains that, in view of the excellent work carried out by ONCE in schools and the involvement of these schools in the education of blind persons, it is inappropriate to argue that, in "one case", ONCE's recommendations were not followed by the teachers in a mainstream school.

61. By way of example, the education authorities of Extremadura have established an agreement with ONCE, published through the Resolution of 24 October 2016 of the General Secretariat, through which attention is drawn to the collaboration agreement, concluded between the Regional Ministry of Education and Employment of the Board of Extremadura and ONCE, on educational support for pupils with special educational support needs associated with a visual impairment. Under this agreement, special training is provided to staff working with pupils with visual impairments.

62. The two institutions undertake to facilitate the access of staff working in special teams to training programmes on blindness and visual impairment, and aspects of psychological/educational support in general, provided by ONCE and the Regional Ministry of Education and Employment.

63. On the basis of the agreement, there is a code of practice governing the special teams responsible for caring for persons with visual impairments in Extremadura. Members of special teams responsible for caring for persons with visual impairments work in conjunction with ONCE staff. They receive special training that enables them to provide individualized care suited to the characteristics of these pupils, providing them with the adaptations and visual aids that they require, and advising and training the educational community.

Resources used

64. Paragraphs 50 and 53 state that "*the general trend observed is for funds to be focused on maintaining special units and centres*" and that "*the rationalization of spending has also led to resources being centralized in special schools*". It is not known what data were used to reach this conclusion or which Autonomous Communities or administrations it concerns as the policy implemented in Spain promotes schooling in ordinary schools.

65. Paragraphs 50 to 54 state that support, resources and equipment are assigned to educational facilities rather than to individuals and that they are scarce. This is not the case.

As the Autonomous Community of Andalusia states in its report, "*when pupils have a requirement and are assigned a technical resource, it is allocated to them for their individual use and not to the school. Pupils take the resource with them if they are transferred to another school or if they change their stage of education. The Regional Government of Andalusia has an extensive catalogue of assistive devices that are intended to enable pupils with special educational needs to attend mainstream schools.*"

66. Furthermore, the education received by pupils with disabilities was said to be of lower quality but no evidence was cited to support this statement and no information was provided on the assessment procedures used to establish and support such a highly subjective conclusion.

67. In addition, it should be noted that every school draws up its own school plan and plan on respect for diversity, using the different specific designations of each Autonomous Community. In these plans, the existing obstacles and the opportunities for overcoming them are identified.

68. With regard to the scarcity of resources, the implementation of education policies based on the quality of teaching has led to the creation of different guidance services that are considered to be instruments of change and educational optimization.

69. The Organic Act on Education contains specific proposals for strengthening the tutorial role of teachers and provides that the educational authorities must promote recognition of that role by offering appropriate professional and financial incentives.

70. With regard to resources for improving learning and supporting teachers, it should be noted that the educational authorities are responsible for promoting the resources needed to ensure the existence of services or professionals specializing in educational, psychological/educational and professional guidance. The following professionals are responsible for providing guidance in non-university teaching establishments:

- Teacher-tutors, who carry out their activities in the classroom, are responsible for providing guidance to groups of pupils through tutorial activities undertaken as part of teaching duties.
- Counsellors, who are professionals in the areas of psychology, education or educational psychology, coordinate the educational guidance provided in schools through structures that are internal to the establishment (guidance departments or units) or external to it (sector teams, normally referred to as educational and educational psychology guidance teams; early care teams; and special teams). They carry out activities related to direct work with students, teachers and families and provide advice on drafting school documentation and preventive measures, etc.
- Where direct work with schools is concerned, the members of the above-mentioned guidance units also include teachers specializing in community services and primary school teachers specializing in therapeutic education, engagement and language who are responsible for undertaking measures aimed at enhancing respect for the diversity of pupils.
- Where indirect work with schools is concerned, activities aimed at supporting guidance units that work with pupils, teachers and families are carried out. These activities are conducted in structures external to the school that may be either specific resource centres or advice centres, with different designations being used in each Autonomous Community.

71. At non-university educational establishments, there may be professionals who undertake educational support and/or health-related work. These are specialists who are specially trained for the tasks that they undertake. They include technical assistants, speech therapists, physiotherapists, occupational therapists, clinical assistants, teachers, senior social integration officers, technical specialists in education and childcare assistants.

72. The planning and supply of services delivered by non-teaching staff who undertake educational and/or health-care support work, and by administrative and service staff, are the responsibility of the various education authorities of the Autonomous Communities.

73. In State-subsidized and non-subsidized private schools, the staff in question are contractors. Non-teaching staff in private schools who undertake tasks related to education, administration and the provision of services are covered by the collective agreements of private schools and State-subsidized private schools that are applicable throughout Spain.

System of reasonable accommodation

74. Paragraph 24 of the report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities of 9 August 2016[1] states that "*Article 5 (3) of the Convention requires States to take all appropriate steps to ensure that reasonable accommodation is provided to persons with disabilities, whenever that is needed in a particular case. That means providing all the necessary and appropriate modifications and adjustments to accommodate a person's individual characteristics or differences, so as to ensure that persons with disabilities can enjoy all human rights and fundamental freedoms, including in accessing infrastructures, programmes and services, on an equal basis with others. According to article 2 of the Convention, that duty extends to persons who are associated with a person with disabilities (for example, agreeing to a flexible working hours schedule for a person who cares for a child with disabilities) and should not impose a disproportionate or undue burden on the duty-bearer, whether it is the State or a private entity.*"

75. Therefore, as stated in general comment No. 4 on the right to inclusive education, "*reasonable accommodation relates to an individual and is complementary to the accessibility duty*".[2]

76. In the report issued on 20 December 2016, the Special Rapporteur presented a thematic study on access to support by persons with disabilities.[3] The study includes guidance for States on how to ensure the provision of different forms of rights-based support and assistance for persons with disabilities, in consultation with them.

77. In this study, support is defined as "*the act of providing help or assistance to someone who requires it to carry out daily activities and participate in society*", which "*encompasses a wide range of formal and informal interventions, including live assistance and intermediaries, mobility aids and assistive devices and technologies*".

78. Paragraph 33 states that "*the State obligation to ensure access to support to persons with disabilities must be distinguished from the obligation to provide accessibility*", while paragraph 34 states that "*similarly, the right to reasonable accommodation is distinct from, although complementary to, the obligation to provide support*".

79. The Convention itself defines reasonable accommodation as "*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*".

80. As the Autonomous Community of Andalusia states in its report, "*when students have a requirement and are assigned a technical resource, it is allocated to them for their individual use and not to the school. Students take the resource with them if they are transferred to another school or if they change their stage of education. The Regional Government of Andalusia has an extensive catalogue of assistive devices that are intended to enable pupils with special educational needs to attend mainstream schools.*"

81. Similarly, the report submitted by the Autonomous Community of Castile-La Mancha states that "*human resources are not assigned to schools in accordance with a fixed allocation, as stated in the report; rather, the amount of resources is determined by the number of pupils and the type of needs that they have*".

[1] https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/254/21/pdf/N1625421.pdf?OpenElement.

[2] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FGC%2F4.

[3] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/436/69/PDF/G1643669.pdf?OpenElement.

82. The Autonomous Community of Castile and León states that "*when a pupil who has special educational needs attends a school, that school is given all the human and material resources that the pupil might need to achieve the proposed goals, whatever they might be. The role of communications mediator has recently been established to provide support in sign language and other alternative communication systems; in conjunction with them, this work has been carried out by teachers specializing in engagement and language.*"

83. The Autonomous Community of Catalonia states that "*in our case there is a network of support for inclusive, consolidated education that is recognized in legislation through Decree No. 150/2017 (article 4). We therefore dispute the assertion that 'shortfalls in the support network hinder the provision of an inclusive and quality education'.*"

84. In the light of these considerations, and as mentioned in the present document, the various education authorities and guidance teams establish support measures and determine the strength of those measures and the degree of accessibility required, taking into account the barriers faced by pupils with disabilities.

85. The Autonomous Community of the Principality of Asturias states that "*the psychological/educational assessment process involves systematically collecting and analysing information from a multidisciplinary perspective with a view to advising school principals and teachers on the drafting, implementation and assessment of learning improvement plans that avoid labelling, segregation and exclusionary patterns of schooling. The classroom is taken as the main point of reference in the assessment process as it is the context that makes it possible to identify and administer those organizational, operational and curricular factors that make it easier for all pupils to remain in school, learn and participate in their education. The purpose of the entire assessment process is always to provide the persons responsible for children's education with guidance for the benefit of pupils.*"

86. In conclusion, it must be stressed that, as reasonable accommodation is required for situations involving a particular case and a particular individual, it is provided when situations arise and therefore does not have the general character that support and accessibility may have.

87. With regard to paragraph 56 of the report, it should be noted that sign language is not a form of support but a system of communication used by some members of the deaf community. As such, it is a means of accessing information and content and ensuring that pupils, particularly those who are hard-of-hearing, can participate fully.

88. The above-mentioned paragraph states that, "*for example, sign language would be offered only to persons with hearing disabilities, but not to persons with other types of disabilities such as intellectual disabilities, cerebral palsy or autism spectrum disorders, who might also benefit from using it*", which indicates that sign language in the education system should primarily be aimed at ensuring that hard-of-hearing or deaf-blind pupils can participate and remain in the education system with the ways and means that are most appropriate to their needs. Generally extending the use of this language to other groups does not seem appropriate, unless, on an individual basis or in a particular way, it is required as a form of reasonable accommodation for a particular pupil.

89. The arguments set out above are all in line with general comment No. 2 on accessibility,[4] which states that "*In order to foster accessibility, education as well as the content of school curricula should promote and be conducted in sign language, Braille, alternative script, and augmentative and alternative modes, means and formats of communication and orientation (...), with special attention to the appropriate languages and modes and means of communication used by blind, deaf and deaf-blind students.*"

[4] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=es.

Accessibility regime

90. The issues raised in paragraphs 57, 58 and 59, which are concerned with accessibility, are addressed in Act No. 10/2014 of 3 December on Accessibility and in the legislation of the Autonomous Communities.

91. By way of example, the Autonomous Community of Castile-La Mancha states that "*Accessibility Act No. 1/1994 of 24 May on Accessibility and the Removal of Barriers in Castile-La Mancha, and the decrees that implement it together with its amendments, including Decree No. 158/1997 of 2 December on the Code of Accessibility of Castile-La Mancha, provide that*:

- Public buildings, installations and facilities shall be constructed in such a way as to ensure that community spaces and all public facilities located therein are accessible. Previously constructed centres and buildings will gradually be adapted and must be made accessible when they undergo comprehensive refurbishment.
- Accessibility in the area of communication shall involve removing communication barriers by establishing mechanisms and technical alternatives that make communication systems and signage accessible to the entire population, ensuring in particular the right to information, communication, culture, education, health, social services and leisure."

92. With regard to extracurricular activities, the Autonomous Community of Andalusia states that "*the legislation provides that the programming of extracurricular activities shall obligatorily take into account pupils who have special educational needs because of a disability and the reduction of the ratio of pupils to teachers in such activities*".

93. Paragraph 58 states that "*school grounds, cafeterias, sports fields and artistic facilities, school trips, camps, and extracurricular activities are not generally accessible and are therefore not inclusive. The Committee repeatedly heard that children with disabilities received less attention. One non-disabled teenager also pointed out that there were no extracurricular activities open to his class 'because there are children with disabilities in the class who can't do them, so they are cancelled for everyone'. This notion feeds negative perceptions and stereotypes about persons with disabilities.*"

94. With regard to this point, it should be noted that a generalization about the entire education system cannot be made on the basis of one particular case.

95. Great progress has been made in the sphere of inclusion, but further work needs to be carried out in the area of accessibility, not only of the physical world but also of the materials and technologies used so that persons with disabilities are not excluded from the realm of digital technology.

Teaching quality

96. Paragraph 62 of the report could give rise to confusion in that it suggests that vocational training is considered to be a lesser option in our education system. It is suggested that students who complete compulsory secondary education do not take the baccalaureate and attend university but undertake vocational training.

97. The statement made in paragraph 65 about the bullying, hostility and rejection to which pupils with disabilities are subjected is inaccurate. In fact, in order to prevent such situations, legislation governing harmony in schools in all the Autonomous Communities establishes the targeting of pupils with special educational needs as an aggravating circumstance in any act that undermines or is seriously detrimental to harmony in schools. In that way, pupils with disabilities are granted special protection. Moreover, schools are the places where rejection is less likely to occur as pupils consider it completely normal to have students with special educational needs in classrooms.

98. Paragraph 65 states that "*this being the case, parents of children with disabilities told the Committee that their children were 'more susceptible to accidents' and that they were subject to violence and bullying in ordinary schools.*" Generalizations cannot be made about such a serious matter and any known cases should be reported.

Institutional and legal framework

99. With regard to the statements made in paragraph 83 of the report, it should be noted that Spain is in the process of assuming all the obligations contained in the following provisions: article 24 of the Convention, general comment No. 4 (2016) on the right to inclusive education, general comment No. 2 (2014) on accessibility, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (goal 4, target 4.5).

Right to education

100. In connection with paragraph 84 of the report, inclusion is clearly defined in Spanish law at both the State and the Autonomous Community level where it is established as a right that enables pupils' education to be adapted so that they can develop to their full potential. No pupil is rejected because he or she has a disability or for any other personal or social reason.

101. In this regard, it should be noted that an entire chapter of the Organic Act on Education (No. 2/2006) of 3 May 2006 is devoted to a new category: pupils with special educational support needs, who are defined as pupils requiring a different type of educational support because they have special educational needs, specific learning difficulties, strong intellectual abilities or because of their late entry into the education system, personal situation or educational history.

102. The Organic Act on Education defines pupils with special educational needs as those who require, for some or all of their schooling, certain specific forms of educational support and care because they have a disability or a serious behavioural disorder.

103. Organic Act No. 8/2013 on Improving the Quality of Education was adopted on 9 December 2013. The preamble states that all students have talent but the nature of that talent differs from person to person; therefore, the education system must be provided with the mechanisms necessary to recognize and develop it. Recognizing the fact that pupils have a range of abilities and expectations is the first step towards developing an educational structure that takes different trajectories into account. The rationale behind this reform involves moving towards a system capable of directing students towards the paths most suited to their abilities so that, by allowing students and their parents or legal guardians to choose the best personal and professional development options, students' aspirations can be realized and those paths can become routes that enhance their employability and stimulate the entrepreneurial spirit.

104. Educational support for pupils with disabilities is governed by the principle of inclusion. For that reason, no amendments have been made to the Organic Education Act, which, from the outset, provided for the educational support of these pupils.

105. In addition, the Government has adopted Act No. 26/2011 of 1 August on the adaptation of legal norms to the Convention in order to ensure the necessary adaptation of the Spanish domestic legal system to the Convention and to amend the regulations in the manner required to give effect to the rights enshrined therein.

106. The legislative amendment enacted through Act No. 26/2011 is based on article 4 of the Convention, in accordance with which States parties undertake to adopt all appropriate legislative, administrative and other measures to ensure that persons with disabilities can fully exercise all their human rights and fundamental freedoms without discrimination of any kind on the basis of disability.

107. To undertake a comprehensive study of Spanish legislation with the aim of bringing it into line with the Convention, an ad hoc interministerial working group was established by decision of the Council of Ministers of 10 July 2009.

108. The Convention represents a radical change in the concept and implementation of the rights of persons with disabilities as it sets out those rights in detail and contains a code of implementation. The general principles of the Convention had already been established in Act No. 51/2003 on Equal Opportunities, Non-discrimination and Universal Accessibility for Persons with Disabilities. However, the Convention represents a change in the understanding of disability, which it frames as a human rights rather than a social

welfare issue. For that reason, it was considered necessary to establish the above-mentioned working group to analyse the legislation and make the appropriate technical amendments required to bring it into line with the Convention.

109. In general terms, the immediate precedent of Act No. 26/2011, which is rooted in the social model of disability, was Act No. 51/2003 of 2 December on Equal Opportunities, Non-discrimination and Universal Accessibility for Persons with Disabilities. However, the former Act is driven by a strong impetus for reform in the sense that it safeguards the rights of persons with disabilities with the aim of promoting decision-making in all aspects of their lives, including the personal and collective spheres, promotes deinstitutionalized personal autonomy and guarantees non-discrimination in a fully inclusive society. The aim of this Act is to harness this new impetus in order to achieve the goal of bringing disability regulations into line with the guidelines set out in the Convention. To that end, it introduces amendments to at least 19 laws in different areas of the Spanish legal system, including civil protection, health, employment, international cooperation, commercial, criminal and civil law.

110. With regard to the right to education of persons with disabilities, the working group has carried out an in-depth study of existing legislation. In the light of this analysis, the group has concluded that the wording of Organic Act No. 6/2001 of 21 December on Universities, and Organic Act No. 2/2006 of 3 May on Education, as subsequently amended by Organic Act No. 8/2013 of 9 December on Improving the Quality of Education, as stated above, are sufficient to ensure that the State's obligations under the Convention are met.

111. With regard to the right to inclusive education, chapter IV on the right to education, and article 18 on the content of that right, of Royal Legislative Decree No. 1/2013 of 29 November, approving the revised text of the General Act on the Rights and Social Inclusion of Persons with Disabilities, provides that *"persons with disabilities have the right to inclusive, quality and free education on an equal basis with others"*.

112. As the report makes clear, some Autonomous Communities adopted relevant legislation in 2017 and 2018 while others are working towards that goal. Examples include the Autonomous Community of the Canary Islands with Decree No. 25/2018 of 26 February on the Promotion of Diversity in Non-university Teaching in the Autonomous Community of the Canary Islands, which provides for measures to promote diversity through an inclusive approach, addressing the characteristics and needs of all pupils and, in particular, those who may be at risk of dropping out of school and therefore becoming socially excluded. Another example is the Autonomous Community of Catalonia with Decree No 150/2017 of 17 October on Educational Support for Pupils within the Framework of an Inclusive Education System, which aims to ensure that all publicly funded educational institutions delivering non-university education are inclusive by establishing criteria that regulate their organization and management; planning measures and means to provide educational support and promote the educational continuity of all pupils; and diversifying the services offered by special schools to enable them to provide services and resources to mainstream schools with the aim of supplementing the inclusive education support network.

113. The Government is currently drafting the 2018–2020 Plan for the Inclusion of Pupils and Students with Special Education Needs. In undertaking this work, it is adopting a participatory and collaborative approach involving the Ministry of Education, Culture and Sports, the Autonomous Communities and civil society.

114. This Plan will contain a definition of inclusion, set out the aims of the Government in the different areas of action under consideration and address the issues raised in paragraph 84 of the report.

115. The Plan covers the following areas of activity: social and family life, educational support for pupils, educational establishments, teachers and other education professionals, life-long learning and finding employment, and collaboration between educational authorities and other institutions that aim to play an active role in international networks on educational support for persons with special educational needs.

116. The 2012–2020 Spanish Strategy on Disability takes account of the fact that the Convention definitively enshrines the shift from the medical model to the human rights model of care. The Strategy likewise proposes a change in social perceptions of disability to ensure recognition of the need to give persons with disabilities the opportunity to live their lives as independently and fully as possible. This involves removing the barriers that prevent them from participating and exercising their rights and fostering conditions in which they can become as independent as possible and develop their physical, mental, social and professional capacities to the full.

117. This strategy, which is based on the removal of barriers, identifies eight key areas of action: accessibility, participation, equality, employment, education and training, social protection, health and external action.

118. In order to protect the best interests of the child, it would not be appropriate to eliminate the psychological/educational assessment referred to in paragraph 84 of the report. As mentioned elsewhere in the present document, this assessment is carried out by qualified staff and is aimed at detecting and identifying the barriers faced by pupils and making proposals on the types and levels of support that pupils require.

119. Contrary to what is stated in paragraph 84 (e), certain pupils require transitional units, support and resources to enable them to be fully included in school. The purpose of these classrooms is to give pupils resources that enable them to be transferred to an ordinary classroom.

120. Steps are currently being taken to develop a major social and political State covenant on education. The ultimate goal is to draft a law on education that has the support of all political groups. Through the subcommittee for the covenant, experts have put forward proposals intended to safeguard the right to education of persons with disabilities.

121. In order to ensure that persons with disabilities enjoy the right to be heard and have their views taken into account through effective consultations with organizations representing them (84 (f)), measures are already being taken by various institutional mechanisms, including the forum for the educational inclusion of pupils with disabilities, which is a collegiate consultative body that operates in plenary and commissions. The forum is made up of representatives of the Ministry of Education, Culture and Sports; the Spanish Committee of Representatives of Persons with Disabilities; the State Council for Schools; the Education Sector Conference; the General Conference on University Policy; and the Council of University Students and Universities. It is constituted as a space for facilitating communication that makes it possible to share information, exchange views, hold debates, channel proposals, promote studies, implement plans and monitor educational policies.

122. In addition, constant contact is maintained with associations and federations of persons with disabilities, thereby ensuring that associations participate, at all times, in actions that concern them.

123. The Spanish Committee of Representatives of Persons with Disabilities also participates in the State Council for Schools, a body that provides guidance on educational legislation.

124. With regard to paragraph 85 of the report, educational legislation provides for the distribution of competences in the field of education. However, this decentralization does not lead to the neglect of pupils with disabilities.

125. The Education Sector Conference, which is composed of the Ministry of Education, Culture and Sports and the regional ministries responsible for education in the Autonomous Communities, is responsible for drawing up joint action plans and programmes and for examining and proposing measures that guarantee the basic equality of citizens in the exercise of their right to education, thereby guiding policy throughout the national territory and ensuring respect for the distribution of competences. Within the Conference there are also working groups made up of experts and representatives of administrations that coordinate and promote policies on inclusion.

126. Within this framework, the Ministry of Education, Culture and Sports is promoting a series of joint actions with the different education authorities and civil society with the aim of harmonizing educational initiatives aimed at pupils with disabilities (strategic plans, calls for grants, conferences and awareness-raising activities, collaboration agreements, cooperation with international organizations).

127. Collaboration also takes place with different interministerial bodies, as does participation in the European Agency for Special Needs and Inclusive Education and the Ibero-American Intergovernmental Cooperation Network for the Education of Persons with Special Educational Needs.

128. The educational authorities, within the scope of their competences, establish the procedures and resources required to identify and provide comprehensive care to the above-mentioned pupils and ensure the participation of parents or guardians in decisions affecting their children's schooling and education.

129. The entire Spanish State, the different ministries and the Autonomous Communities are making ongoing efforts to improve the quality of life, education and self-determination of persons with disabilities.

130. As the reports contained in Annex I of the combined second and third periodic reports submitted by Spain to the Committee make clear, the Autonomous Communities and the Ministry of Education are making decisive progress in their efforts to provide the highest level of educational quality and support to pupils with disabilities.

C. Conclusion

131. One of the principles governing education in Spain is equality, which guarantees equal opportunities, educational inclusion, non-discrimination and universal accessibility and acts as a compensating element for personal, cultural, economic and social inequalities, particularly those arising from disability.

132. The above is carried out in accordance with the social model of disability. This model is based on human rights and respect for the dignity of the person.

133. The issue at stake is therefore one of making the right to education of persons with disabilities a reality by implementing the Convention, complying with Sustainable Development Goal 4 (Goal 4: Ensure inclusive and quality education for all and promote lifelong learning), particularly the fifth target of this goal (by 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations), and complying with the declaration contained in the 2030 Agenda.

134. For all the reasons set out above, the Government cannot possibly concur with the suggestion that the right to education of persons with disabilities is seriously, systematically and deliberately violated in Spain.

135. In Spain, in recent decades, all governments have committed themselves to, and promoted, legislation in which inclusion is a guiding principle, in order to address the education of pupils with disabilities.

136. In that regard, the Autonomous Communities, within the scope of their competences, continue to promote inclusion through their own legislation and its implementation in schools. Mention should also be made of the fundamental role played by education professionals and by families, and their commitment to carrying out their work and educational activities in the interests of the child in accordance with established procedures.

137. All the above actions have brought about improvements in the quality of education, especially in the support given to pupils with special educational needs.

138. The promotion of inclusion is an ongoing process in which imbalances occur. As in any organization, such imbalances should be corrected in the best interests of the child as and when they come to light.

139. Lastly, we would like to thank the Committee for its comments in the knowledge that they will allow progress to be made towards the full inclusion of pupils with disabilities and will enable the Government to strengthen its commitment to ensuring equitable and quality educational support for persons with disabilities on the basis of the principles of educational inclusion and in accordance with the Convention.